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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 BARBARA STUART ROBINSON,

12 Plaintiff,

13 v.

14 WASHINGTON STATE OFFICE OF  
15 FINACIAL MANAGEMENT, RISK  
16 MANAGEMENT DIVISION,

Defendant.

CASE NO. C11-5462RJB

ORDER DENYING APPLICATION  
TO PROCEED *IN FORMA*  
*PAUPERIS* AND DISMISSING CASE

17 This matter comes before the court on plaintiff's Motion to Proceed *In Forma Pauperis*.  
18 Dkt. 1. The court has considered the motion and the remainder of the file herein.

19 On June 15, 2011, plaintiff filed a civil complaint and an application to proceed *in forma*  
20 *pauperis* (IFP), that is, without paying the \$350 filing fee for a civil case. Dkt. 1 and 2.

21 **Standard for Granting Application for IFP.** The district court may permit indigent  
22 litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See*  
23 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to  
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1 proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9<sup>th</sup> Cir. 1963), *cert. denied* 375  
2 U.S. 845 (1963).

3 **Plaintiff's Application to Proceed IFP.** Plaintiff states that she has no income and no  
4 assets.

5 Since 2010, plaintiff filed eight cases, in addition to the present one, in this court. *See*  
6 *Stuart-Robinson v. Green River Community College*, C10-112MAT (plaintiff granted IFP status;  
7 case dismissed on summary judgment; appeal pending); *Robinson v. Hampton*, C10-5189BHS  
8 (plaintiff granted IFP status; case dismissed on motion for judgment on the pleadings); *Robinson*  
9 *v. State of Washington Department of Corrections*, C10-5652RBL (plaintiff granted IFP; case  
10 dismissed for lack of jurisdiction, on defendants' motion to dismiss; appeal pending); *Robinson*  
11 *v. Department of Corrections State of Washington*, C10-5861RBL (application to proceed IFP  
12 filed; case stayed pending appeal of C10-5652RBL); *Robinson v. NW Advanced*  
13 *Communications Services Corp.*, C10-5919RBL (plaintiff's application to proceed IFP denied;  
14 case dismissed as frivolous and for failure to state a claim); *Robinson v. Pierce Transit*, C10-  
15 5929BHS (application to proceed IFP granted; case dismissed with prejudice); *Robinson v. City*  
16 *of Tacoma Police Department*, C11-5014RJB (application to proceed IFP denied and case  
17 dismissed; IFP denied on appeal as frivolous, and appeal dismissed for failure to perfect appeal;  
18 *Robinson v. Tacoma Community College*, C11-5151BHS (filing fee paid; case pending). The  
19 cases have involved significant motions practice by the defendants.

20 **Review of the Complaint.** In light of plaintiff's recent litigation history, the court has  
21 carefully reviewed the complaint in this matter. Because plaintiff filed this complaint *pro se*, the  
22 court has construed the pleadings liberally and has afforded plaintiff the benefit of any doubt.  
23 *See Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9<sup>th</sup> Cir.1988).

1 Plaintiff alleges that she filed a tort claim with the Washington State Office of Financial  
2 [sic] Management Risk Management Division (Risk Management Division) on September 16,  
3 2010; that the Risk Management Division made no effort to provide her with reasonable  
4 assistance and instructions; and that the Risk Management Division violated Washington  
5 Administrative Code 284-30-360. Dkt. 1-1 and 2. It appears that the incident underlying the tort  
6 claim is the subject of C10-5652RBL and C10-5861RBL.

7 Plaintiff contends that the Risk Management Division (1) denied her rights to due process  
8 and liberty, under the Washington Constitution; (2) denied her reasonable assistance and  
9 instructions under “the priviledges [sic] of state law and liberty”; (3) denied her liberty without  
10 due process under the Fourteenth Amendment to the United States Constitution; and (4) denied  
11 her equal protection of state law under WAC 284-30-360(4). Dkt. 1-1, at 3-4.

12 *Plaintiff’s Claim Under the United States Constitution.* 42 U.S.C. § 1983 provides in  
13 pertinent part as follows:

14 Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of  
15 any State...subjects, or causes to be subjected, any citizen...to the deprivation of any rights,  
16 privileges, or immunities secured by the Constitution and laws, shall be liable to the party  
injured in an action at law, suit in equity, or other proper proceeding for redress.  
42 U.S.C. § 1983.

17 "[N]either a State nor its officials acting in their official capacities are 'persons' under [42  
18 U.S.C.] § 1983." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct 2304 (1989); *Hale*  
19 *v. Arizona*, 993 F.2d 1387, 1398 (9th Cir. 1993) (*en banc*). Further, the Eleventh Amendment “bars  
20 such suits unless the State has waived its immunity[.]” *Will*, 491 U.S. at 65, and the Washington  
21 State Supreme Court has held that the State of Washington is immune from suits arising under 42  
22 U.S.C. § 1983. *Rains v. State*, 100 Wn.2d 660, 666, 674 P.2d 165 (1983). *See also Cortez v. Cy of*  
23 *Los Angeles*, 294 F.3d 1186, 1187 (9th Cir. 2002); *Edgar v. State*, 92 Wn.2d 217 (1979). Regardless

1 of the forum—state or federal—a state is not susceptible to suit under 42 U.S.C. § 1983. *Will*, 491  
2 U.S. at 85 (1989).

3 Plaintiff has filed this suit against a State agency. Any claim against an agency of the State  
4 of Washington or a person acting in an official capacity is barred by the Eleventh Amendment.

5 Further, plaintiff's claim is apparently premised on the State's responsibilities under WAC  
6 284-30-360(4). This is an insurance regulation. A state agency is not an insurance company.  
7 Any Due Process claim premised on an insurance regulation is without foundation. Plaintiff's  
8 claim that she was denied Due Process by a State agency that failed to assist her in filing a tort  
9 claim is frivolous.

10 To the extent plaintiff claims a violation of equal protection, she has alleged that claim  
11 under state, not federal, law. Moreover, plaintiff has not alleged any facts that could support a  
12 federal equal protection claim.

13 Any claim plaintiff makes in this case, based upon a federal constitutional violation, is  
14 frivolous, and the complaint fails to state a claim.

15 Unless it is absolutely clear that no amendment can cure the defect, a *pro se* litigant is  
16 entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal  
17 of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995). In this case, as  
18 discussed above, any attempt by plaintiff to amend the complaint would be futile.

19 *Claims under State Law.* The complaint does not state a claim over which the federal  
20 court has jurisdiction. Because the court does not have original jurisdiction, it does not have  
21 supplemental jurisdiction over the state law claims. *See Herman Family Revocable Trust v.*  
22 *Teddy Bear*, 254 F.3d 802, 804-807 (9<sup>th</sup> Cir. 2001).

1       **Decision on Application to Proceed IFP.** Based upon plaintiff's prior—and recent—  
2 litigation history, and based upon the above analysis of the deficiencies in the complaint, the  
3 court should deny plaintiff's application to proceed *in forma pauperis*.

4       **Sua Sponte Dismissal.** A federal court may dismiss *sua sponte* pursuant to Fed.R.Civ.P.  
5 12(b)(6) when it is clear that the plaintiff has not stated a claim upon which relief may be  
6 granted. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) ("A trial court may  
7 dismiss a claim sua sponte under Fed.R.Civ.P. 12(b)(6). Such a dismissal may be made without  
8 notice where the claimant cannot possibly win relief."). *See also Mallard v. United States Dist.*  
9 *Court*, 490 U.S. 296, 307-08 (1989) (there is little doubt a federal court would have the power to  
10 dismiss frivolous complaint sua sponte, even in absence of an express statutory provision). A  
11 complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745 F.2d  
12 1221, 1228 (9th Cir. 1984). This case has no arguable basis in law or fact. The complaint should  
13 be dismissed as frivolous and for failure to state a claim.

14       **Telephone Contacts with Clerk's Office.** Plaintiff has called the Clerk's Office  
15 numerous times. She has consistently used and angry and abusive language, including profanity,  
16 when speaking with Clerk's Office staff. Plaintiff was cautioned by the court, during a hearing  
17 in *Robinson v. Washington State Department of Corrections*, C10-5652RBL, Dkt. 31, to treat  
18 staff respectfully when visiting the Clerk's office for filings and inquiries. The Clerk's Office  
19 staff should not be required to tolerate plaintiff's abusive behavior. Plaintiff is directed not to  
20 contact the court, including the Clerk's Office, by telephone, regarding this case.

21       **Filings Regarding this Case.** Pursuant to this order, this case is dismissed. Plaintiff is  
22 registered to file with the court's Electronic Case Filing (ECF) system. In *Robinson v. Tacoma*  
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1 Community College, C11-5151BHS, the court issued an order that included the following  
2 provision:

3 The Court finds that Robinson has violated Rule 11(b) with her numerous  
4 incomprehensible and frivolous filings. The Court also finds that an appropriate sanction  
5 is the Court's *sua sponte* review of future Robinson filings. If the Court determines a  
6 filing is an appropriate motion or request for relief, the Court will note it accordingly.  
7 Otherwise, the filing will simply become part of the case file. The Court also warns  
8 Robinson that future frivolous filings may likely result in additional sanctions.

9 C11-5151BHS, Dkt. 71.

10 Plaintiff is directed that, other than a Notice of Appeal, she may not file requests of the  
11 court in this case, or motions related to this case. Any document plaintiff files in this case in the  
12 future, other than a Notice of Appeal, will be filed in the case but will not be acted upon by the  
13 court.

14 **IFP on Appeal.** In the event that plaintiff appeals this order, and/or appeals dismissal of  
15 this case, IFP status should be denied by this court, without prejudice to plaintiff to file with the  
16 Ninth Circuit U.S. Court of Appeals an application to proceed *in forma pauperis*.

17 Therefore, it is hereby

18 **ORDERED** that plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. 1 and 2) is  
19 **DENIED**. This case is **DISMISSED WITH PREJUDICE**. In the event that plaintiff appeals  
20 this order, IFP status is **DENIED** by this court, without prejudice to plaintiff to file with the  
21 Ninth Circuit U.S. Court of Appeals an application to proceed *in forma pauperis*.

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1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 17th day of June, 2011.

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6 ROBERT J. BRYAN  
7 United States District Judge  
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